



General Assembly

February Session, 2008

Substitute Bill No. 5157

* HB05157INS__031108__ *

AN ACT CONCERNING THE MARKETING OF MEDICAL DISCOUNT PLANS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-479qq of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) As used in this section and section 38a-479rr, as amended by this
4 act:

5 (1) "Affiliate" means a person that directly or indirectly through one
6 or more intermediaries, controls, or is controlled by, or is under
7 common control with, a health insurer, health care center, hospital
8 service corporation, medical service corporation or fraternal benefit
9 society licensed in this state;

10 (2) "Consumer" means: (A) A person to whom a medical discount
11 plan is marketed or advertised, or (B) a member, as defined in this
12 subsection;

13 (3) "Marketer" means a person that markets, advertises or sells a
14 medical discount plan, including, but not limited to, an entity that
15 markets, advertises or sells a medical discount plan under its own
16 name;

17 [(3)] (4) "Medical discount plan" means a business arrangement or
18 contract in which a person, in exchange for payment, provides access
19 for its members to providers of health care services and the right to
20 receive health care services from those providers at a discount.
21 "Medical discount plan" does not include a product that (A) is
22 otherwise subject to regulation or approval under this title, or (B) costs
23 less than twenty-five dollars, annually, in the aggregate;

24 [(4)] (5) "Medical discount plan organization" means a person that
25 (A) establishes a medical discount plan, (B) contracts with providers,
26 provider networks or other medical discount plan organizations to
27 provide health care services at a discount to medical discount plan
28 members, and (C) determines the fees charged to the members for the
29 medical discount plan. "Medical discount plan organization" does not
30 include a health insurer, health care center, hospital service
31 corporation, medical service corporation or fraternal benefit society
32 licensed in this state or any affiliate of such health insurer, health care
33 center, hospital service corporation, medical service corporation or
34 fraternal benefit society;

35 [(5)] (6) "Health care services" means any care, service or treatment
36 of an illness or dysfunction of, or injury to, the human body. "Health
37 care services" includes physician care, inpatient care, hospital surgical
38 services, emergency medical services, ambulance services, dental care
39 services, vision care services, mental health care services, substance
40 abuse services, chiropractic services, podiatric services, laboratory test
41 services and the provision of medical equipment or supplies. "Health
42 care services" does not include pharmaceutical supplies or
43 prescriptions;

44 [(6)] (7) "Member" means an individual who pays for the right to
45 receive the benefits of a medical discount plan; and

46 [(7)] (8) "Person" means a person, as defined in section 38a-1.

47 (b) No person [may] shall market, advertise or sell to a resident of

48 this state a medical discount plan or any plan material that: (1) Fails to
49 provide to the consumer a clear and conspicuous disclosure that the
50 medical discount plan is not insurance and that the plan only provides
51 for discounted health care services from participating providers within
52 the plan; (2) uses in its marketing materials, advertisements, brochures
53 or member discount cards the term "insurance", "health plan",
54 "coverage", "copay", "copayments", "preexisting conditions",
55 "guaranteed issue", "premium", "PPO", "preferred provider
56 organization" or any other term that could reasonably mislead a
57 person into believing the medical discount plan is insurance, except
58 that such terms may be used as a disclaimer of any relationship
59 between the medical discount plan and insurance; (3) fails to provide
60 the name, address and telephone number of the administrator of the
61 medical discount plan; (4) fails to make available to the consumer
62 through a toll-free telephone number, upon request of the consumer, a
63 complete and accurate list of the participating providers within the
64 plan in the consumer's local area and a list of the services for which the
65 discounts are applicable; (5) fails to make a printed copy of such list
66 available to the consumer upon request commencing with the time the
67 plan is purchased or fails to update the list at least once every six
68 months; (6) fails to use plain language to describe the discounts or
69 access to discounts offered and such failure results in representations
70 of the discounts that are misleading, deceptive or fraudulent; (7) fails
71 to provide the consumer notice of the right to cancel such medical
72 discount plan; (8) offers discounted health care services or products
73 that are not authorized by a contract with each provider listed in
74 conjunction with the medical discount plan; (9) fails to allow a
75 consumer to cancel a medical discount plan not later than thirty days
76 after the date payment is received by the medical discount plan; (10)
77 with respect to a consumer who cancels a medical discount plan
78 pursuant to subdivision (9) of this subsection, fails to guarantee a
79 refund of all membership fees paid to the medical discount plan by the
80 consumer, excluding a reasonable one-time processing fee, not later
81 than thirty days after the member gives timely notification of
82 cancellation of the plan to the medical discount plan organization; or

83 (11) fails to (A) provide at least one member discount card for each
84 member as proof of membership, and (B) prominently display on such
85 member discount card a statement that the medical discount plan is
86 not insurance.

87 (c) Any person who knowingly operates as a medical discount plan
88 organization in violation of this section shall be fined not more than
89 ten thousand dollars. Any person who knowingly aids and abets
90 another that the person knew or reasonably should have known was
91 operating as a medical discount plan organization in violation of this
92 section shall be fined not more than ten thousand dollars.

93 (d) Any person who collects fees for purported membership in a
94 medical discount plan but fails to provide the promised benefits shall
95 be subject to the penalties for larceny under sections 53a-122 to 53a-
96 125b, inclusive, depending on the amount involved.

97 (e) Any person licensed in this state as a health insurer, health care
98 center, hospital service corporation, medical service corporation or
99 fraternal benefit society, or any affiliate owned or controlled by such
100 health insurer, health care center, hospital service corporation, medical
101 service corporation or fraternal benefit society, may offer medical
102 discount plans in this state pursuant to such licensure.

103 Sec. 2. Section 38a-479rr of the general statutes is repealed and the
104 following is substituted in lieu thereof (*Effective October 1, 2008*):

105 (a) Before doing business in this state as a medical discount plan
106 organization, an entity shall:

107 (1) Be a corporation, limited liability company, limited liability
108 partnership, or other legal entity organized under the laws of this state
109 or, if a foreign corporation or other foreign entity, authorized to
110 transact business in this state; and

111 (2) Obtain a license as a medical discount plan organization from
112 the Insurance Commissioner in accordance with this section. The entity

113 shall file an application for a license to operate as a medical discount
114 plan organization with the commissioner on such form as the
115 commissioner prescribes. Such application shall be sworn to by an
116 officer or authorized representative of the applicant, under penalty of
117 false statement, and be accompanied by (A) a copy of the applicant's
118 articles of incorporation, including all amendments; (B) a copy of the
119 applicant's bylaws; (C) a list of the names, addresses, official positions
120 and biographical information of the medical discount plan
121 organization and the individuals who are responsible for conducting
122 the applicant's affairs, including, but not limited to, all members of the
123 board of directors, board of trustees, executive committee, or other
124 governing board or committee, the officers, contracted management
125 company personnel, and any person or entity owning or having the
126 right to acquire ten per cent or more of the voting securities of the
127 applicant, which listing shall fully disclose the extent and nature of any
128 contracts or arrangements between the applicant and any individual
129 who is responsible for conducting the applicant's affairs, including any
130 possible conflicts of interest; (D) for each individual listed in
131 subparagraph (C) of this subdivision as being responsible for
132 conducting the applicant's affairs, a complete biographical statement
133 on forms prescribed by the commissioner; (E) a statement generally
134 describing the applicant, its personnel and the health care services to
135 be offered; (F) a copy of the form of all contracts made or to be made
136 between the applicant and any providers or provider networks
137 regarding the provision of health care services to members; (G) a copy
138 of the form of any contract made or to be made between the applicant
139 and any person listed in subparagraph (C) of this subdivision; (H) a
140 copy of the form of any contract made or to be made between the
141 applicant and any person for the performance on the applicant's behalf
142 of any function, including, but not limited to, marketing,
143 administration, enrollment and subcontracting for the provision of
144 health care services to members; (I) a copy of the applicant's most
145 recent financial statements audited by an independent certified public
146 accountant, or, in the case of an applicant that is a subsidiary of a
147 person or parent corporation that prepares audited financial

148 statements reflecting the consolidated operations of the person or
149 parent corporation, a copy of the person's or parent corporation's most
150 recent financial statements audited by an independent certified public
151 accountant, provided the person or parent corporation also issues a
152 written guarantee that the minimum capital requirements of the
153 applicant required by this section will be met; (J) a description of the
154 proposed method of marketing; (K) a description of the subscriber
155 complaint procedures to be established and maintained; [and] (L) the
156 fee for a medical discount plan organization license set forth in section
157 38a-11 of the 2008 supplement to the general statutes; and (M) a list of
158 the names, addresses and telephone numbers of the marketers the
159 applicant has authorized to market a medical discount plan in this
160 state under a name that is different from the name of the applicant. For
161 purposes of this subdivision, a "contract to be made" shall be
162 determined based on the information known to the applicant on the
163 date the information is filed with the commissioner.

164 (b) (1) A current and accurate list of authorized marketers, specified
165 in subparagraph (M) of subdivision (2) of subsection (a) of this section,
166 shall be submitted to the commissioner with each renewal fee, as set
167 forth in subsection (c) of this section.

168 (2) Any change made to the list of authorized marketers, specified in
169 subparagraph (M) of subdivision (2) of subsection (a) of this section,
170 shall be electronically filed with the commissioner. If such change is to
171 add a marketer to a medical discount plan organization's list of
172 authorized marketers, such change shall be electronically filed by such
173 organization prior to the marketer doing business in the state for such
174 organization.

175 (3) The commissioner may adopt regulations, in accordance with
176 chapter 54, to establish the procedure and format of the electronic
177 filing and acknowledgment set forth in this subsection.

178 [(b)] (c) If the commissioner finds that the applicant is in compliance
179 with the requirements of this section the commissioner shall issue the

180 applicant a license as a medical discount plan organization which shall
181 expire one year after the date of issue. The commissioner shall renew
182 the license if the commissioner finds that the licensee is in compliance
183 with the requirements of this section and the licensee has paid the
184 renewal fee set forth in section 38a-11 of the 2008 supplement to the
185 general statutes.

186 ~~[(c)]~~ (d) Prior to applying for a license from the commissioner, a
187 medical discount plan organization shall establish an Internet web site
188 that contains the information described in subsection ~~[(r)]~~ (s) of this
189 section.

190 ~~[(d)]~~ (e) Any license or renewal fee received pursuant to this section
191 shall be deposited in the Insurance Fund established in section 38a-52a.

192 ~~[(e)]~~ (f) Nothing in this section shall require a provider who
193 provides discounts to the provider's own patients to obtain or maintain
194 a license as a medical discount plan organization.

195 ~~[(f)]~~ (g) Each provider who offers health care services to members
196 under a medical discount plan shall provide such services pursuant to
197 a written agreement. The agreement may be entered into directly by
198 the provider or by a provider network to which the provider belongs.

199 ~~[(g)]~~ (h) A provider agreement shall include: (1) A list of the services
200 and products to be provided at a discount; (2) the amount of the
201 discounts or, alternatively, a fee schedule that reflects the provider's
202 discounted rates; and (3) a requirement that the provider will not
203 charge members more than the discounted rates.

204 ~~[(h)]~~ (i) A provider agreement between a medical discount plan
205 organization and a provider network shall require that the provider
206 network have written agreements with its providers that: (1) Contain
207 the terms set forth in subsection ~~[(g)]~~ (h) of this section; (2) authorize
208 the provider network to contract with the medical discount plan
209 organization on behalf of the provider; and (3) require the network to
210 maintain an up-to-date list of its contracted providers and to provide

211 that list on a quarterly basis to the medical discount plan organization.
212 No medical discount plan organization may enter into or renew a
213 contractual relationship with a provider network that is not licensed in
214 accordance with section 38a-479aa of the 2008 supplement to the
215 general statutes.

216 [(i)] (j) The medical discount plan organization shall maintain a
217 copy of each active agreement that it has entered into with a provider
218 or provider network.

219 [(j)] (k) Each medical discount plan organization shall at all times (1)
220 maintain a net worth of at least two hundred fifty thousand dollars, or
221 (2) post a surety bond in the amount of one hundred thousand dollars.

222 [(k)] (l) The commissioner [may] shall not issue or renew a license
223 under this section unless the medical discount plan organization has
224 (1) a net worth of at least two hundred fifty thousand dollars, or (2)
225 posted a surety bond in the amount of one hundred thousand dollars.

226 [(l)] (m) The commissioner may suspend the authority of a medical
227 discount plan organization to enroll new members, revoke any license
228 issued to a medical discount plan organization, refuse to renew a
229 license of a medical discount plan organization or order compliance if
230 the commissioner finds that any of the following conditions exist:

231 (1) The organization is not operating in compliance with this section
232 or section 38a-479qq, as amended by this act;

233 (2) The organization does not have the minimum net worth required
234 by this section;

235 (3) The organization has advertised, sold or attempted to sell its
236 services in such a manner as to misrepresent its services or capacity for
237 service or has engaged in deceptive, misleading or unfair practices
238 with respect to advertising or sales;

239 (4) The organization is not fulfilling its obligations as a medical

240 discount plan organization; or

241 (5) The continued operation of the medical discount plan
242 organization would be hazardous to its members.

243 [(m)] (n) If the commissioner has reasonable cause to believe that
244 grounds for the suspension, nonrenewal or revocation of a license
245 exist, the commissioner shall notify the medical discount plan
246 organization in writing specifically stating the grounds for suspension,
247 nonrenewal or revocation.

248 [(n)] (o) When the license of a medical discount plan organization is
249 surrendered, nonrenewed or revoked, the organization shall,
250 immediately following the effective date of the order, wind up and
251 settle the affairs transacted under the license. The organization [may]
252 shall not engage in any further marketing, advertising, sales, collection
253 of fees or renewal of contracts as a medical discount plan organization,
254 and its authorized marketers shall not engage in any further
255 marketing, advertising or sales on behalf of such medical discount plan
256 organization.

257 [(o)] (p) The commissioner shall, in any order suspending the
258 authority of a medical discount plan organization to enroll new
259 members, specify the period during which the suspension is to be in
260 effect and the conditions, if any, which must be met by the medical
261 discount plan organization prior to reinstatement of its license to enroll
262 new members. The commissioner may rescind or modify the order of
263 suspension prior to the expiration of the suspension period.

264 [(p)] (q) The commissioner [may] shall not reinstate a license: (1)
265 Unless reinstatement is requested by the medical discount plan
266 organization, and (2) if the commissioner finds that the circumstances
267 which led to the suspension still exist or are likely to recur.

268 [(q)] (r) Each medical discount plan organization shall provide the
269 commissioner at least thirty days' advance written notice of any
270 change in the medical discount plan organization's name, address,

271 principal business address or mailing address.

272 [(r)] (s) Each medical discount plan organization shall maintain an
273 up-to-date list of the names and addresses of the providers with which
274 it has contracted on an Internet web site, the address of which shall be
275 prominently displayed on all its marketing materials, advertisements,
276 brochures and member discount cards. The list shall include providers
277 with whom the medical discount plan organization has contracted
278 directly as well as providers who will provide services to the
279 organization's members as part of a provider network with which the
280 medical discount plan organization has contracted.

281 [(s)] (t) Each medical discount plan organization shall (1)
282 prominently display on any member discount card the names or
283 identifying logos or trademarks of any provider networks with whom
284 the medical discount plan organization has a contract, and (2) provide
285 the names of such provider networks to members upon request.

286 (u) No marketer shall market, advertise or sell to a resident of this
287 state a medical discount plan under a name that is different than the
288 medical discount plan organization's name unless: (1) The medical
289 discount plan organization has obtained a license from the Insurance
290 Commissioner in accordance with this section; (2) the marketer is listed
291 on such medical discount plan organization's list of authorized
292 marketers as set forth in subparagraph (M) of subdivision (2) of
293 subsection (a) or subsection (b) of this section; (3) the name, address
294 and telephone number of the medical discount plan organization
295 appears on the plan materials; and (4) the marketer does not contract
296 directly with providers or provider networks. A marketer shall not be
297 required to obtain a license from the commissioner.

298 (v) A medical discount plan organization may market directly or
299 contract with marketers for the distribution of a medical discount plan.
300 The medical discount plan organization shall execute a written
301 agreement with a marketer and comply with the requirements set forth
302 in subparagraph (M) of subdivision (2) of subsection (a) or subsection

303 (b) of this section, as applicable, prior to the marketing, advertising or
 304 selling of such medical discount plan by such marketer. Such written
 305 agreement shall prohibit the marketer from using any advertising and
 306 marketing materials, including, but not limited to, brochures and
 307 medical discount plan cards, without the written approval of the
 308 medical discount plan organization prior to the usage of such
 309 advertising and marketing materials.

310 (w) Each medical discount plan organization that contracts with a
 311 marketer shall be bound by and responsible for the activities of such
 312 marketer within the scope of the marketer's agency relationship with
 313 the medical discount plan organization.

314 ~~[(t)]~~ (x) The commissioner may adopt regulations, in accordance
 315 with chapter 54, to implement the provisions of this section.

316 ~~[(u)]~~ (y) Any person who violates any provision of this section shall
 317 be fined not more than two thousand dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	38a-479qq
Sec. 2	October 1, 2008	38a-479rr

INS *Joint Favorable Subst.*